REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NOS. 2409 & 2412 OF 2006**

% **Date of Decision** : 4th May, 2007.

ELLURU PANDURANGAPPA THR. LRS .... Appellant in LPA 2409.
SMT. YASHODAMMA ..... Appellant in LPA 2412.
Through Ms. Nidhi Bisaria, Advocate.

VERSUS

UNION OF INDIA .... Respondent.
Through Mr. Suresh Kait, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present appeals by legal representatives of Elluru Pandurangappa and Smt. Yashodamma, wife of Late Mr. Naganna arise out of common judgment and involve somewhat common questions. These appeals are therefore being disposed of by this common judgment. The appeals are directed against judgment dated 13th July, 2006 passed by the learned Single Judge dismissing the Writ Petitions

filed by the appellants on the ground of laches and upholding the stand of the respondent that the appellants are entitled to grant of pension under the freedom fighter's Scheme from the date of the order and not from the date when the applications were made.

2. In 1980, the Central Government formulated *Swatantra Sainik Samman Pension Scheme* (hereinafter referred to as the Scheme, for short). On fulfilling the terms and conditions mentioned in the Scheme, a freedom fighter who had espoused the cause of freedom from foreign rule and had suffered on that account is entitled to pension. This Scheme introduced in 1980 was in modification of and liberalised the earlier Freedom Fighters Pension Scheme introduced in 1972. The freedom fighters are entitled to the benefit under the new Scheme irrespective of their present income and as a token of honour/ samman to them. The Scheme made specific provision of pension for different category of freedom fighters who had suffered because of their participation in the freedom struggle.

3. As question of laches is involved it will be appropriate to refer to the facts of the two cases.

4. The appellant in LPA 2409- Elluru Pandurangappa had sent a representation dated 10th November, 1986 to the Central Government. However, as the appellant had not submitted his pension application, vide letter dated 28th November, 1986 he was requested to submit his

pension application in advance to the Central Government and pursue the matter with the State Government for verification.

5. In 1988, the appellant filed Writ Petition No. 13229/1988 before the High Court of Karnataka at Bangalore. In the said Writ Petition, Union of India was directed to consider the application of the appellant. Thereafter, pension application was received by the Central Government on 21st March, 1988. After considering the same, pension application was rejected on 27th March, 1989 on the ground that the said appellant had failed to furnish documentary evidence from official records and recommendation report of the State Government. As per the affidavit filed by the respondent in the appeal, in the pension application the appellant had not claimed that he was in jail or had gone underground and against both the relevant columns in the application form, the appellant had specifically marked 'No'.

6. Subsequently, the Government of Karnataka recommended the claim of the appellant. In the copy of the pension application forwarded by the State Government, the appellant had claimed that he had gone underground during the freedom struggle and suffered on that account. The columns in the application form relating to 'underground suffering' had been filled up and mentioned 'Yes' in affirmative. The respondent Union of India examined the claim and rejected the application vide letter dated 10th August, 1990 as the appellant was not able to substantiate the

claim with the help of official documents. The appellant had claimed that he had gone underground due to participation in Hyderabad liberation movement but there was nothing on record to show jail suffering or underground suffering for minimum period of six months, required for being considered eligible for grant of pension.

7. It appears that the appellant then approached Ministry of Home Affairs which accorded sanction from the date of approval, i.e. 25th December, 1991. Accordingly, the appellant started getting pension w.e.f. the said date . The appellant had since expired and now his wife is getting the pension as per the Scheme.

8. The appellant herein after a lapse of 14 years approached the Court by filing Writ Petition No. 8413/2004, inter alia, praying that he should be granted arrears of pension from the date of his application till 25th December, 1991. The said claim had been rejected by the learned Single Judge.

9. In LPA 2412, the appellant-Smt. Yashodamma is the wife of late Mr. Naganna who had submitted an application under the Scheme. By letter dated 16th April, 1992 Mr. Naganna was communicated and informed that he had been sanctioned pension @ Rs.750/- p.m. w.e.f. 25th December, 1991. On 17th September, 1993, Mr. Naganna expired and thereafter the pension is being paid to his wife-appellant herein. The appellant has no grievance and the pension is being regularly being paid

to her.

10. In 2005, the appellant filed Writ Petition No. 12676/2005 claiming arrears of pension from 20th October, 1981 till 24th December, 1991 were payable to her husband Mr. Naganna. Reliance in this regard was placed upon the judgment of the Supreme Court in Civil Writ No.12676/2004 titled ***Duli Chand and others versus Union of India and others*** reported in (1992) 2 SCC 28 wherein by order dated 16th July, 1990 pension was directed to be paid w.e.f. 1st August, 1980 and also Civil Writ No. 153/1992 decided on 14th May, 1993 wherein pension was directed to be paid from the date when the original application was received from the applicants, whether or not the said applicants had initially filed requisite evidence.

11. Learned counsel for the appellants also placed reliance upon the decision of the Division Bench of this Court in LPA No.1821/2006 titled ***Sadashiva Raj Purohit versus Union of India***. In the said decision a reference was also made to an earlier decision of this Court in W.P.(C). No. 8481/2004 decided on 11th January, 2005 titled ***Indumati Bai versus Union of India,*** which decision was subsequently upheld by the Division Bench vide Order dated 11th July, 2006.

12. We have examined the decision of the Division Bench of this Court in ***Sadashiva Raj Purohit*** (supra). In the said case, the Division Bench has given a specific finding that there was nothing on record to

substantiate and show that pension was granted by giving benefit of doubt. It was also held that there was nothing on record in the form of document or affidavit to establish and substantiate that pension was granted to the appellant therein on the ground of benefit of doubt.

13. The question whether pension was granted on benefit of doubt had arisen in view of the subsequent decision of the Supreme Court in the case of ***Government of India versus K.V. Swaminathan*** reported in (1997) 10 SCC 190 wherein it has been held that where pension is granted on benefit of doubt, the same is required to be paid from the date of order of sanction and not from the date of the application. This decision of the Supreme Court has been subsequently followed in ***Union of India versus Ganesh Chand Dolai*** reported in (1997) 10 SCC 289.

14. As far as the case of Elluru Pandurangappa is concerned, the matter is covered by the decision of the Supreme Court in the case of ***Ganesh Chand Dolai*** (supra) and the subsequent decisions holding, inter alia, that where pension has been granted giving benefit of doubt, the same is payable from the date of sanction and not from the date of application itself.

15. We have also examined the decision of the Division Bench of this Court in ***Sadashiva Raj Purohit*** and find that the question of laches and delay in filing the writ petition has not been examined and dealt with. The said decision, therefore, cannot be held to be a binding decision on

this Court on the question of laches and delay. It would be appropriate to refer to the case of ***Municipal Council, Ahmednagar v. Shah Hyder Beig***, reported in (2000) 2 SCC 48 in which has been held by the Supreme Court as under:

> "**14.** ...It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant..."

16. Similarly in case of ***Shri Vallabh Glass Works Ltd. v. Union of India***, reported in (1984) 3 SCC 362 it has been held as follows:

> "While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative

> remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable."

17. In both these Appeals pension was sanctioned from the date of the order, namely, 16th April, 1992 in the case of Mr. Naganna and in the case of Mr. Elluru Pandurangappa from 25th December, 1991. The writ petitions came to be filed after nearly 14 years in 2004 and 2005, respectively. Laches and delay on the face of the records is apparent. There are no averments or allegations in the petition explaining this delay and laches. As mentioned above, though no time period has been prescribed for filing a writ petition challenging an Order but it is well settled that a writ petition should be filed within reasonable period. Directing payment of arrears of pension for periods prior to 1992/1991 in writ petitions filed after gap of 14 years will not be justified and proper. It may be appropriate to refer to the decision in ***State of Rajasthan versus D.R. Laxmi,*** reported in (1996) 6 SCC 445 wherein the following observations of H.W.R. Wade in Administrative Law (7th Edn.) was quoted with approval:-

> "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time- limit expires after which

> its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."

18. In view of the above, we do not find any merit in the present appeals and the same are dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 04, 2007.
P/VKR